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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 4199 OF 2006
IN
ARBITRATION PETITION No. 229 OF 2004

Jayesh H. Pandya & Ors. ... Petitioners

Vs.

Ashok B. Gupta & Anr. ... Respondents

Ms. Jacinta D'Silva, Advocate for the petitioner/applicant.

Ms. Jyoti M. Chavan, Advocate for the respondent.

CORAM : D. G. KARNIK, J.

DATE : MARCH 8, 2007.

PC :-

1. Heard the learned counsel for the applicant/petitioner and respondent Nos. 1 to 7. None present for respondent Nos. 8 and 9.

2. This Motion is taken out by the applicant for an order of the Court, directing the Prothonotary & Senior Master to hand over the documents and papers, set out in Schedule A to the Motion to the Investigating Officer, Azad Maidan Police station, for investigation

into the alleged crime.

3. By a letter dated 29th June 2006, the Police Sub Inspector / Investigating Officer attached to the Azad Maidan Police Station has requested the Prothonotary & Senior Master to hand over to him the originals or the certified copies of the Joint Venture Agreement and Declaration Deed, deposited in this Court, for the purpose of investigation of a crime alleged to have been committed in the complaint being Complaint Case No. 1/M/06 under section 190 Cr.P.C., pending in the 8th Court, Esplanade, Mumbai.

4. Learned counsel for the respondent submitted that previously a similar request was made by the respondents to this Court, by filing a praecipae and this Court by its order dated 21st October 2005 had declined to pass any order. The counsel therefore, submitted that the court should not grant the applicant's request which was not previously granted.

5. I have perused a copy of the order

dated 21st October 2005, which reads thus - "no order on the praecipae" .

6. It appears to me that the prayer for handing over the documents, being substantive prayer, the court declined to pass any order on the praecipae. It is worthwhile to note that by declining to pass any order on the praecipae, the court has not declined any order on merits. Similar is the case in respect of order dated 2nd August 2006. The Court had merely stated "no order" without indicating that the court had declined to grant any relief. In my view therefore, the two orders dated 21st October 2005 and 2nd August 2006 cannot be interpreted to mean that the court has refused the request.

7. If the investigating police officer requires papers for investigation of a crime, there is no reason why they should not be made available to him, merely because some proceeding is pending between the parties in this court. It is also worthwhile to note that what the police have asked for is either the

originals or certified xerox copies. I find no reason to deny the request for the supply of the xerox copies, to the police.

8. In the circumstances, motion is partly allowed. The Prothonotary, Senior Master to furnish the certified xerox copies of the documents, mentioned in Schedule-A to the Motion, to the police.

9. Liberty to the parties to move, if the police authorities require originals at any stage.

10. The request of the respondent for stay of operation of this order is rejected.

Sd/-

[D. G. KARNIK, J.]